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of others there will be no merger. *Sherlock v. Thompson*, 167 Iowa, 1, 148 N. W. 1035. In the principal case no one had any standing to object if the trustee conveyed to herself. *Partridge v. Clary*, 228 Mass. 290, 117 N. E. 332. See A. W. Scott, "Control of Property by the Dead," 65 UNIV. OF PA. L. REV. 649-650. The sole reason for keeping the trust alive would be to give effect to the testator's ill-expressed intent that the enjoyment of the corpus of the trust be postponed. In England and in some of our jurisdictions a postponement of the enjoyment of the interest of a sole *cestui que trust* would be invalid aside from the question of merger. *Saunders v. Vautier*, 4 Beav. 66; *Magrath v. Morehead*, L. R. 12 Eq. 491; *Huber v. Donoghue*, 49 N. J. Eq. 125, 23 Atl. 495. *Contra*, *Claflin v. Claflin*, 149 Mass. 18, 20 N. E. 454. And, even in the jurisdiction which enunciated the doctrine of *Claflin v. Claflin*, such limitation will be disregarded if circumstances make postponement of enjoyment inexpedient. *Sears v. Choate*, 146 Mass. 395, 15 N. E. 786. The Massachusetts court has recently approved the language in *Sears v. Choate* and has expressed itself in accord with the principal case on similar facts. See *Langley v. Conlan*, 212 Mass. 135, 138, 98 N. E. 1064, 1066.

**VOLUNTARY ASSOCIATIONS — ACTIONS AGAINST.** — The plaintiff was expelled from membership in an unincorporated association, upon a vote of the members of the association, because of an alleged violation of a regulation of the society. He brought an action for damages against the society in its collective name without service on the individual members, and recovered judgment. *Held*, that judgment be reversed for want of jurisdiction. *Simpson v. Grand International Brotherhood of Locomotive Engineers*, 98 S. E. 580 (W. Va.).

For a discussion of the principles involved in this case, see NOTES, *supra*, p. 298.

**WATERS AND WATERCOURSES — PROFITS À PRENDRE — RIGHT TO TAKE FISH ON A NON-NAVIGABLE, NON-TIDAL STREAM.** — The defendant was alleged to have converted mussels by taking them from the bed of a non-navigable, non-tidal river at a place where the plaintiff was owner of both banks of the stream. A statute declared that title to all game and fish was vested in the state (1909 MO. REV. STAT., c. 49, § 6508). *Held*, that the plaintiff could not recover. *Gratz v. McKee*, 258 Fed. 335 (Circ. Ct. App., 8th Circ.).

Title to the beds of all navigable streams is vested in the sovereign in trust for the public. *Forestier v. Johnson*, 164 Cal. 24, 127 Pac. 156. See *Commonwealth v. Alger*, 7 Cush. (Mass.) 53, 90. *Contra*, *Willow River Club v. Wade*, 100 Wis. 86, 76 N. W. 273. By the English and early American common law the existence of a tidal ebb and flow determined navigability. *Adams v. Pease*, 2 Conn. 481; *Hooker v. Cummings*, 20 Johns. (N. Y.) 90. Geographical conditions have altered the test in many jurisdictions to navigability in fact. *The Daniel Ball*, 10 Wall. (U. S.) 557. See *Kinkead v. Turgeon*, 74 Neb. 573, 584, 109 N. W. 744, 746. But some jurisdictions have retained the earlier rule. *Lattig v. Scott*, 17 Idaho, 506, 107 Pac. 47; *Washington Ice Co. v. Shortall*, 101 Ill. 46. When the bed of a stream is owned by the sovereign, the right of fishing is public. *In re Provincial Fisheries*, 26 Can. Sup. Ct. 444. See *Dunham v. Lamphere*, 3 Gray (Mass.), 268, 271. By the great weight of authority the owner of both banks of a non-navigable river, who is thereby owner of the subaqueous soil, acquires the exclusive right of fishing. *Beach v. Morgan*, 67 N. H. 529; *Queen v. Robertson*, 6 Can. Sup. Ct. 52. But some courts hold that the right of fishing is incident to the general easement of passage over public waters. See *Hartman v. Tresise*, 36 Colo. 146, 162, 84 Pac. 685, 690. The right to fish upon the land of another is a profit à prendre and is incapable of creation except by grant or prescription. *Fitzgerald v. Firbank*, [1897] 2 Ch. 96. See *Cobb v. Davenport*, 33 N. J. L. 223, 225. An action will lie for violation thereof.

*Griffith v. Holman*, 23 Wash. 347, 63 Pac. 239. The principal case appears to accept the doctrine that fishing rights are dependent upon the public character of the waters, regardless of the ownership of the subaqueous soil, although it emphasizes the more narrow procedural ground that trover will not lie, as title to the mussels is vested in the state.

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## BOOK REVIEWS

**JURIDICAL REFORM.** *A Critical Comparison of Pleading and Practice under the Common Law and Equity Systems of Practice, the English Judicature Acts and Codes of the Several States of this Country, with a View to Greater Efficiency and Economy.* By John D. Works. New York: The Neale Publishing Company. 1919. pp. 199.

Fifty years at the bar and on the bench may serve to confirm a lawyer in the idea that the main lines of the procedure with which he has been familiar for half a century were ordained by nature and, beyond a few cautious changes in details, must not be questioned, or they may make him conscious of the magnitude of the task confronting the lawyer of to-day on whom rests the chief responsibility for making the legal administration of justice an effective instrument of social engineering. Mr. Works, a soldier in the Civil War, practitioner in Indiana and in California, author of two well-known legal texts, sometime Justice of the Supreme Court of California and United States Senator, writes from abundant and varied experience and with first-hand knowledge of the defects in American judicial organization and procedure of which he speaks. Hence his pronouncement that we have too many courts (p. 25) and that the intermediate appellate courts now so common in this country are a "blunder" (p. 26), his approval of committing regulation of procedure to rules of court rather than to legislation (p. 43, also chap. 14), his argument for abolishing the demurrer (chap. 5), and his preference for an appointive bench (p. 128), add weight to opinions now general among thinking lawyers.

But Mr. Works does more than approve of these things which have come to be commonplaces in programs of law reform. On occasion he shows himself a bold, independent thinker, as, for example, in his comments on the practical impossibility of the statement of facts constituting a cause of action or defense such as the codes of procedure contemplated (p. 45), — something which the framers of the federal Equity Rules should have had before them when they penned rule 25, with its call for the "ultimate facts," — in his remarks as to the jury in civil cases (p. 50), his observations as to the attorney general and the federal courts (p. 123), and his views on the subject of appeals (pp. 86-87). The last two deserve notice. Sir John Hollams in 1906 — thinking, perhaps, of a situation in which the decision of a county judge was reviewable by a divisional court, which was reviewable by the Court of Appeal, which was reviewable by the House of Lords — wrote that, as he believed, "A majority of suitors would prefer a system without appeal" (Jottings of an Old Solicitor, 161). For many cases the elaborate series of appeals is now abridged in England. But three hearings are still possible and common. Mr. Works, familiar with a system where two appeals are permissible and common, is also willing to abolish appeals. Perhaps a better course would be to provide for but one appeal and greatly to simplify appellate procedure, treating an appeal as a motion for a rehearing or new trial, or for vacation or modification of the order or judgment complained of, before another tribunal. It is significant, however, that two experienced and orthodox common-law lawyers should come independently